

The claimant was employed as a screener for the respondent. The respondent manufactures storm windows and claimant's job required him to place the metal screen over the window by cutting the screen to fit and placing it on the window.

The claimant had a prior workers compensation claim with respondent which had resulted in bilateral carpal tunnel surgery and was settled on October 8, 1997. The claimant had returned to work with respondent in April 1997 performing his same job duties.

The claimant testified that approximately three months after he returned to work his symptoms in his upper extremities reappeared and began to worsen. The claimant alleges that he informed his boss, Harlan Cleaver, two or three times a day that his hands were getting worse. The claimant noted the pain worsened to the point that he sought treatment with Dr. Thoman.

The claimant further testified he was provided a light-duty work slip from Dr. Goldman, a neurologist, but Mr. Cleaver advised claimant that there was no work available. The claimant last worked for respondent on December 16, 1999.

Mr. Harlan Cleaver, the respondent's plant manager, testified claimant worked intermittently after his surgery because the work was seasonal. The claimant was laid off from December 1997 through April 1998 and again in January 1999 through March 1999. Mr. Cleaver testified claimant began having attendance problems and was advised he needed to show up for work every day or he would be terminated. The claimant blamed his attendance problems on sleep apnea.

Mr. Cleaver specifically denied claimant had said anything about having problems with his hands and arms when he returned to work following his carpal tunnel surgery. Moreover, Mr. Cleaver noted the only light-duty slip that claimant provided was dated November 17, 1999, and referred to a muscle strain to the neck. Lastly, Mr. Cleaver noted claimant never reported any injury to either his neck, hands or arms.

The medical exhibits offered at the preliminary hearing indicate claimant sought treatment with Dr. Thoman in August 1999 with complaints of headaches. Following an emergency room visit on November 17, 1999, wherein claimant was given an off-work slip for one day, the claimant again saw Dr. Thoman on November 18, 1999, with complaints of neck pain. On a follow-up visit on December 1, 1999, for the neck pain Dr. Thoman noted the claimant just had neck pain complaints.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish his right to an award of compensation and to prove the conditions on which that right

depends.¹ "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."²

The contemporaneous medical records do not corroborate the claimant's contention that he was suffering from pain in his arms and hands. He sought treatment during this period for his headaches and pain in his neck but did not mention problems with his hands and arms.

The evidence regarding notice was controverted. The Board finds some deference should be given to the Administrative Law Judge's conclusions as he had the opportunity to assess the witnesses' credibility. The Board, therefore, affirms the Administrative Law Judge's conclusion that claimant failed to prove he suffered a work-related accidental injury and further failed to prove that he provided respondent with timely notice of accident.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated July 17, 2001, is affirmed.

IT IS SO ORDERED.

Dated this 28th day of September 2001.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent and Insurance Carrier
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

¹K.S.A. 44-510(a); *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

²K.S.A. 44-508(g). *See also* In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).